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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5235 OF 2007

The Sarpanch
Gram Panchayat, Pophalavane ... Petitioner

V/s.

Jaisingh Bhikaji Shinde ... Respondent

Mr.S.S. Pakale for Petitioner

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 24, 2007**

P.C.:

. The petition challenges the award dated 11.10.2006 passed in Reference (IDA) No.4 of 2002. The main contention raised in the petition is that the petitioner was unable to remain present before the Labour Court when the Reference was heard and, therefore, it could not contest the Reference. It is contended that the petitioner is a Gram Panchayat of a remote village and therefore, some indulgence be shown to the petitioner. In para 18 of the petition, the petitioner has averred as follows:

> "18. The Petitioner states that, they had thereafter instructed their Advocate to file Written Statement on their behalf to the Statement of Claim filed by the Respondent. The Advocate, Shri. Athalye, however, by his letter dated 12/09/2006, which was received by the Petitioner on 20/09/2006 withdrew his Vakalatnama without any just and convincing

> reasons. At the relevant time, the Petitioner was pre-occupied with many works of Gram Panchayat and therefore they could not take a decision for engaging another Advocate in place of Shri. Athalye.

2. However, paragraphs 4 and 5 of the award indicate that the petitioner's advocate filed his appearance on 31.1.2006. The Sarpanch of the petitioner Gram Panchayat had appeared on 14.11.2005 and sought an adjournment to file written statement. On 31.1.2006, an advocate was appointed by the petitioner. The matter thereafter was adjourned on several dates for filing a written statement. Since no written statement was forthcoming from the petitioner, the Labour Court proceeded to decide the matter by directing the respondent workman to file an affidavit in lieu of his examination in chief. The advocate appearing for the petitioner expressed his inability to cross-examine the witness as he had obtained a discharge on 12.9.2006. He produced the letter written by him to the petitioner on record. In these circumstances, the Labour Court proceeded to decide the Reference in the absence of a written statement and without any cross-examination on behalf of the petitioner of the respondent. The Labour Court considered the evidence on record and held that the respondent had proved that his services were illegally terminated. In these circumstances, the Labour Court directed the petitioner to reinstate the

respondent workman and to pay him 50% of the backwages with all consequential benefits. This award was passed on 11.10.2006. The petition has been filed on 9.7.2007. No reasons have been mentioned in the petition for the delay in filing the writ petition. The petition must therefore be rejected.

3. Mr.Pakale insisted on pointing out on merits that the workman must discharge the burden to prove that the Gram Panchayat is an industry before the Labour Court can grant any relief in the Reference. The learned advocate then submits that every Gram Panchayat is not necessarily an industry and the workman was required to prove something more to bring the Gram Panchayat within the four corners of the definition under section 2(j) of the Industrial Disputes Act. He then submits that the Labour Court is expected to adjudicate the Reference and, therefore, must do so by first determining whether the Gram Panchayat is an industry and then whether the respondent is a workman as defined under section 2(s). He urges that without framing an issue as to whether the Gram Panchayat is an industry or not, the Labour Court could not have proceeded with the Reference.

4. The learned Advocate relies on the judgments of this Court in *Gram Panchayat, Sawargaon v/s Jamnaprasad*

Raghunath Prasad, **1968 (LB2) GJX 0292 BOM**; *Gram Panchayat, Katil v/s. Presiding Officer, First Labour Court, Nagpur & Ors.,* **1989 (LB2) GJX 0138 BOM** and *Village Panchayat of Collem v/s. Industrial Tribunal, Government of Goa & Anr.,* **1994 (LB3) GJX 0637 BOM** in support of his submission that Gram Panchayat is an industry. In the present case, a Reference was made for adjudication on the footing that the workman was employed in an industry. No issue as to whether he was employed in an industry or not was raised by the petitioner at any point of time. It did not care to challenge the Reference itself nor did it bother to instruct its advocate for filing a written statement. The judgment in the case of *Gram Panchayat, Sawargaon (supra)* has been decided prior to the decision of the Supreme Court in the case of *Bangalore Water Supply & Sewerage board v/s. A. Rajappa* **(1978) 2 SCC 213**. The Division Bench of this Court relied on the decision of the Supreme Court in the case of *State of Bombay v/s. Hospital Mazdoor Sabha*, **1960 I LLJ 251** and *Corporation of the City of Nagpur v/s. Its employees,* **1960 I LLJ 523** and held on the basis of the evidence before it that Savargaon Gram panchayat was not an industry. This judgment would not have any application today in view of the judgment of the Supreme Court in *Bangalore Water Supply (supra).*

5. In the case of *Gram Panchayat, Katil (supra)*, the Division Bench concluded that there was no evidence adduced before the Labour Court to prove that the Gram Panchayat was an industry. This was not a case when the Gram Panchayat had not appeared or contested the Reference. The Division Bench came to the conclusion that the workmen in that case have not proved that the Gram Panchayat was an industry when the Gram Panchayat had raised this issue. The Division Bench came to the conclusion that there was no material before the Labour Court to reach the conclusion that the Gram Panchayat was an industry. It must be noted here that this decision was delivered on the basis that the petitioners had pleaded that it was not an industry as defined under section 2(j) of the Industrial Disputes Act in their written statement.

6. In the case of *Village Panchayat of Collem (supra)*, a Reference for adjudication was made against the Gram Panchayat. The Gram Panchayat appeared and contested the Reference by contending that it was not an industry. The finding of the Tribunal indicates that it did not consider this issue which was raised by the Gram Panchayat. It was in these circumstances that this Court remanded the reference to the Tribunal.

7. Thus, there is no general rule as sought to be

made out by the learned advocate for the petitioner that all Gram Panchayats are not industries. The workman would be required to discharge the burden to show that the Gram Panchayat is an industry only when the Gram Panchayat contests this issue. When a Reference is made, because the Government is satisfied that the employer is an industry as defined under section 2(j) of the I.D. Act. Unless the employer contests this status, the workman would not be required to prove that he was working in an industry. When there is no written statement on record contesting the issue, it must be presumed that the employer had accepted the position that it was an industry. Therefore, the workman does not have to discharge any burden in that regard.

8. The issue as to whether the petitioner is an industry or not need not be framed if the employer does not join issue in this regard with the workman. In my opinion, therefore, there is no need to interfere with the findings of fact of the Labour Court. The Petitioner has shown no reason whatsoever for not filing the written statement for over four years. Apart from this, there is no explanation for the delay in filing the present petition. Petition is, therefore, rejected.